

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

-----X  
DENNIS CLARK,

Plaintiff,

-against-

**AMENDED ANSWER**

JAMES & SONS TOBACCONISTS,

1:18 – CV- 1035 (LEK/TWD)

Defendant.

-----X

Defendant, James & Sons Tobacconists, by and through his attorneys, COOPER ERVING & SAVAGE, LLP (Christiopher P. Flint, Of Counsel), states as follows as an Amended Answer to the Complaint herein:

1. DENIES each and every claim, statement and/or allegation contained in Paragraphs 1, 2, 14, 15, 16, 17, 18, 19, 21, 25, 26 and 27 of the Complaint.
2. DENIES knowledge and information sufficient to form a belief as to the truth or falsity of the claims contained in Paragraphs 7, 8, 9, 10, 11 and 24 of the Complaint and therefore DENIES same.
3. DENIES knowledge and information sufficient to form a belief as to the truth or falsity of the claims contained in paragraphs 12 and 23 of the Complaint and refers all questions of law to the Court for resolution.
4. REPEATS, REITERATES and REALLEGES each and every denial, denial of sufficient knowledge and denial with referral of legal questions to the Court contained and/or realleged in Paragraphs 13 and 20 of the Complaint, as if fully set forth herein.

**AS AND FOR A FIRST AFFIRMATIVE DEFENSE**

The Complaint fails to state a claim upon which relief can be granted.

**AS AND FOR A SECOND AFFIRMATIVE DEFENSE**

Plaintiffs' claims for relief are barred by the "Fair Use Doctrine" pursuant to Section 107 of the Copyright Act, 17 U.S.C. §107.

**AS AND FOR A THIRD AFFIRMATIVE DEFENSE**

One or more third parties are liable for the conduct alleged and will be required to answer and indemnify.

**AS AND FOR A FOURTH AFFIRMATIVE DEFENSE**

Plaintiff's claims for relief are barred by the Lack of Originality Doctrine.

**AS AND FOR A FIFTH AFFIRMATIVE DEFENSE**

Plaintiff's claims for relief are barred by defendant's Constitutional right to free speech.

**AS AND FOR A SIXTH AFFIRMATIVE DEFENSE**

Defendant's conduct was innocent, non-infringing, and not a willful infringement of copyright.

**AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE**

Plaintiffs have engaged in one or more acts that have misused their copyrights including but not limited to having wrongfully attempted to extend the scope of the limited monopoly granted by the Copyright Act. Defendants reserve the right to assert one or more antitrust related claims.

**AS AND FOR A EIGHTH AFFIRMATIVE DEFENSE**

Plaintiff's claims for relief are barred by the Doctrine of Unclean Hands.

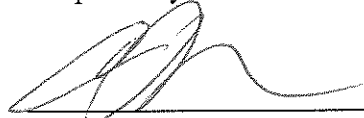
**AS AND FOR A NINTH AFFIRMATIVE DEFENSE AND FIRST COUNTERCLAIM**

Defendant is entitled to recover its reasonable attorneys fees, pursuant to 17 U.S.C. Section 505 of the Copyright Act for the reasons that (a) Plaintiff's claim is frivolous, and (b) to deter repeated instances of over- aggressive pursuit of Copyright claims.

WHEREFORE, defendant respectfully prays for an Order dismissing the Complaint and awarding defendant, costs, disbursements and attorneys fees.

Dated: October 3, 2018

Respectfully submitted



---

Christopher P. Flint, Esq.  
Attorney for Defendant  
COOPER ERVING & SAVAGE, LLP  
39 North Pearl Street, 4<sup>th</sup> Floor  
Albany, New York 12207  
Tel.: (518) 449-3900  
E-mail: [cflint@coopererving.com](mailto:cflint@coopererving.com)